

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1596 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
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 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

RAMAJI TALAJI THAKORE &1

Versus

MANSURKHAN IJJANKHAN BELIM &1

Appearance:

MR MEHUL SHARAD SHAH for Petitioners
MR KS JHAVERI for Respondent No. 1, 2

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE A.R.DAVE

Date of decision: 30/07/96

ORAL JUDGEMENT : [Per : Pandya,J]

Admit. With the consent of the parties, the matter is taken up for final hearing today.

The claimants are the dependents of deceased Popatji. On 20.5.1987, at about 5.30 p.m., the deceased

who was on his bicycle moving on the road with his friend Ramesh who was also on bicycle, when ST bus No. GTE 7257 came from the side without any warning sign or horn and knocked him down.

Claiming compensation of Rs. 1,50,000/, the appellants claimants approached the M.A.C. Tribunal at Mehsana. Their claim application being MAC Petition No. 276/88 came to be tried by M.A.C. Tribunal (Auxi) Mehsana which was pleased to award only a sum of Rs.34,000/ with costs and interest. Hence, present appeal for Rs. 1 lac.

We have gone through the judgment and we find that the approach of the learned Judge in working out the base figure is not correct. The evidence before the trial court was to the effect that the deceased was earning almost Rs. 35/ per day and his monthly income should be worked out on that basis. After allowing for pocket expenses which the circumstances of the case might warrant, the entire remaining figure ought to have been taken for working out the total loss or after allowing for the said pocket expenses, straightway, the formula of $\frac{2}{3}$ rd and $\frac{1}{3}$ rd should have been applied.

If this is done, we find that the monthly income on an average would be Rs. 900/. From that pocket expenses to the extent of Rs. 200/ is deducted because the deceased had to go at different places for carrying out the job work as a Painter and so the amount available for the house will be Rs. 700/.

Admittedly, the deceased was unmarried, the formula of $\frac{2}{3}$ rd and $\frac{1}{3}$ rd will have to be applied. On this basis if amount is worked out for a period of one year, the income amount available to the family would be Rs. 8400/ and $\frac{1}{3}$ rd will work out at Rs. 2800/. The multiplier given by the trial court is adopted namely 15 and the amount that we get is Rs. 42,000/. This will be the loss of dependency so far as the appellantsapplicants are concerned. The amount towards loss of expectancy of life is awarded to the tune of Rs. 10,000/ which we do not disturb. However, towards funeral expenses as well as expenses for bringing the body after post mortem examination is awarded to the extent of Rs. 3000/ totalling to Rs. 55,000/.

To the sum of Rs. 34,000/ as awarded by the trial court, therefore, additional figure of Rs. 21,000/ is required to be added. This is, of course, with proportionate costs and interest as awarded by the

Tribunal and it will be admissible from the date of the application till realisation.

Appeal is allowed to the aforesaid extent with no order as to costs. Award to be drawn accordingly.

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